

Materials used on the Force Account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then instead of Invoices, the Statements shall contain or be accompanied by an affidavit of the Contractor certifying that such Materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the Actual Cost to the Contractor, excluding storage costs.

No payment will be made for Work performed on a Force Account basis until the Contractor has furnished duplicate itemized Statements of the cost of such Force Account Work detailed to the following:

- 1) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer.
- 2) Designation, dates, daily hours, total hours, rental rate, and amount for each unit of Equipment.
- 3) Quantities of Materials, prices, and amounts.
- 4) Transportation charges on Materials.

109.8 Contract Modification Excepting changes to quantities as provided in Section 109.1.1 - Changes Permitted, all changes to the Contract that affect compensation, time, or quality must be made by written Contract Modification. The Contract Modification will describe the underlying issue that resulted in the Contract Modification and will specify adjustments to compensation, time, or other Work requirements, as applicable. If adjustments to compensation or time are not shown on the face of the Contract Modification, then there are no such adjustments.

All Contract Modifications must be signed by the Project Manager or Resident. By signing a Contract Modification, the Contractor agrees to all the terms thereof and waives any and all claims for additional compensation, time, or other Work requirement adjustments relating to the issue that is the subject of the Contract Modification. All Contract Modifications are to be noted in Progress Meeting minutes.

SECTION 110 - INDEMNIFICATION, BONDING AND INSURANCE

Scope of Section This Section contains general requirements for indemnification, bonding, and insurance by the Contractor.

110.1 Indemnification The Contractor agrees to indemnify, defend, and hold harmless the Department and its officers, directors, employees, agents and consultants from and against all claims, actions, torts, costs, losses, and damages for bodily injury (including sickness, disease, or death) and property damage arising out of or relating to this Contract or the performance of Work by the Contractor and its Subcontractors, subconsultants, Engineers, suppliers, any individuals or entities directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excepting only claims directly and solely caused by the negligence of the Department. Damages covered include, but are not limited to, all Dispute resolution costs including court costs, attorney's fees, and the fees of Engineers and consultants, arbitrators, and other professionals related to Dispute defense and preparation.

This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor, subconsultant, Engineer, supplier, or other individual or entity under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

110.2 Bonding

110.2.1 Bonds The Contractor shall provide signed, valid, and enforceable Performance and Payments Bonds complying with the Contract. The Department may also require Warranty and Maintenance Bonds for specific items using a Contract specific special provision. For a related provision, see Section 103.5 - Award Conditions.

The Contractor shall procure bonds from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Business Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

The bonds shall each be in the full Contract amount, payable to the "Treasurer - State

of Maine,” and on the Department's forms, on exact copies thereof, or on forms that do not contain any significant variations from the Department’s forms as solely determined by the Department.

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time of performance, quality, warranties, and the Department's self-help remedy provided in Section 112.1 - Default to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by these bonds, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-day period constitutes the Surety’s waiver of any right to deny or contest payment and the Surety’s acknowledgment that the claim is valid and undisputed.

If the Surety becomes financially insolvent or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified of such change.

For a related provision, see Section 106.9.4 - Other Warranty Provisions.

110.2.2 Bond for Use of Municipal Roads A bond for use of municipal Roads may be required as provided in Section 105.5 - Hauling of Materials and Equipment.

110.2.3 Bonding for Landscape Subcontractors The Contractor shall retain only Landscape Subcontractors that provide a signed, valid, and enforceable Performance, Warranty, or Maintenance Bond complying with the Contract.

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All Bonds shall be procured from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Business Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

The bonds shall each be in the full Subcontract amount, payable to the “Treasurer - State of Maine,” and on the Department’s forms, on exact copies thereof, or on forms that

do not contain any significant variations from the Department's forms as solely determined by the Department.

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time for performance, quality, warranties, and the Department's self-help remedy provided in Section 112.1 - Default to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by these bonds, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-day period constitutes the Surety's waiver of any right to deny or contest payment and the Surety's acknowledgment that the claim is valid and undisputed.

The Landscape Subcontractor shall pay all premiums and take all other actions necessary to keep said bond in effect for the duration of the Landscape Subcontractor's obligations. If the Surety becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified or becomes aware of such change.

110.3 Insurance The Contractor shall provide signed, valid, and enforceable certificate(s) of insurance complying with this Section. All insurance must be procured from insurance companies licensed or approved to do business in the State of Maine by the State of Maine, Department of Business Regulation, Bureau of Insurance. The Contractor shall pay all premiums and take all other actions necessary to keep required insurances in effect for the duration of the Contract obligations, excluding warranty obligations.

110.3.1 Workers' Compensation For all operations performed by the Contractor and any Subcontractor, the Contractor and each Subcontractor shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board in accordance with the requirements of the laws of the State of Maine. If maritime exposures exist, coverage shall include United States Long Shore and Harbor Workers coverage.

110.3.2 Commercial General Liability With respect to all operations performed by the Contractor and any Subcontractors, the Contractor and any Subcontractors shall carry commercial general liability insurance in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the Aggregate. The coverage must include products, completed operations, and Contractual liability coverages, and Insurance Services Office (ISO) form #CG25031185 or equivalent. The Contractual liability insurance shall cover the Contractor's obligations to indemnify the Department as provided in this Contract including Section 110.1 - Indemnification. The coverage shall also include protection against damage claims due to use of explosives, collapse, and underground coverage if the Work involves such exposures.

110.3.3 Automobile Liability The Contractor shall carry Automobile Liability Insurance covering the operation of all motor vehicles including any that are rented, leased, borrowed, or otherwise used in connection with the Project. The minimum limit of liability under this Section shall be \$1,000,000.00 per occurrence.

110.3.4 Professional Liability Contractors who engage in design Work, preliminary Engineering Work, and environmental consulting Work for the Department shall maintain a Professional Liability policy for errors and omissions with a minimum limit of liability of \$500,000.00. "Design Work" includes the design of temporary Structures and all other Work that requires design computations. This policy shall cover "Wrongful Acts," meaning negligent acts, errors or omissions by the Contractor, or any entity for whom the Contractor is legally liable, arising out of the performance of, or failure to perform, professional services.

110.3.5 Owners and Contractors Protective Liability If required by Special Provision, the Contractor shall carry an Owners and Contractors Protective (OCP) Policy covering all operations performed by the Contractor and any Subcontractor, in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the Aggregate, naming the Department as the sole insured party under the policy.

110.3.6 Builders Risk Unless required by Special Provision, the Department does not require the Contractor to carry Builders Risk Insurance. However, the Contractor is advised of its risks for damage to the Work as provided in Section 104.3.10 - Responsibility for Damage to the Work. The Contractor is responsible for managing and insuring these risks as it deems appropriate.

110.3.7 Environmental Impairment If required by Special Provision, the Contractor shall carry Environmental Impairment insurance to cover the risk of sudden or accidental discharge of pollutants during the prosecution of the Work. The limits of liability for this coverage shall be in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the Aggregate. Regardless of whether such insurance is carried by the Contractor, the Contractor is responsible for managing these risks as it deems appropriate.

110.3.8 Administrative & General Provisions

A. Additional Insured Each policy with the exception of Workers' Compensation and Professional Liability insurance shall name the Department of Transportation as an additional insured.

B. Defense of Claims Each insurance policy shall include a provision requiring the carrier to investigate, defend, indemnify, and hold harmless all named insureds against any and all claims for death, bodily injury, or property damage, even if groundless.

C. Primary Insurance The insurance coverage provided by the Contractor shall be primary insurance with respect to the State, its officers, agents, and employees. Any insurance or self-insurance maintained by the State for its officers, agents, and employees is in excess of the Agent's insurance and shall not contribute with it.

D. Reporting Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the State, its officers, agents, and employees.

E. Separate Application The insurance provided by the Contractor shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

SECTION 111 - RESOLUTION OF DISPUTES

Scope of Section This Section contains provisions for resolving Disputes early, efficiently, fairly, and as close to the Project level as possible. For related provision, see Section 104.4 - Communication and Coordination.

111.1 General